STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-485

Application of John Petell for a certificate of public	)
good for an interconnected net metered photovoltaic	)
electrical power system	)

Order entered: 8/18/2009

I. INTRODUCTION

In this Proposal for Decision, I recommend that the Vermont Public Service Board ("Board") impose sanctions related to the application filed by John Petell ("Petitioner" or "Applicant") for a certificate of public good ("CPG") for a net metered photovoltaic generation facility in Huntington, Vermont.

II. BACKGROUND

This case involves an application filed by John Petell ("Applicant") on December 1, 2008, requesting a CPG, pursuant to 30 V.S.A. §§ 219a and 248 and Board Rule 5.100, for a net metering system. The net metering system consists of a photovoltaic system located on the Applicant's property in Huntington, Vermont.

Comments in opposition to the project on aesthetic grounds were filed by George and Patricia Brisson, neighboring property owners (the "Brissons"), on December 1, 2008. The Brissons also noted that construction of the system had already begun without Board approval.

On June 9, 2009, I conducted a site visit to the Applicant's property followed by a prehearing conference in Huntington. Appearing at the site visit and prehearing conference were: the Applicant; the Brissons; John Cotter, Esq., for the Vermont Department of Public Service ("Department"); and John Blittersdorf, of Central Vermont Solar and Wind, the installer of the net metering system. Several other neighboring property owners and members of the public were also in attendance. During the prehearing conference the Applicant and his contractor acknowledged that the system had been installed and interconnected without Board approval and

that information provided on the application form was false. The Applicant and his installer also agreed to work with the Brissons to mitigate the aesthetic impact of the project.

On June 25, 2009, the Brissons filed a letter with the Board stating that they had not been contacted by the Applicant or the installer of the system with regard to potential mitigation.

On July 1, 2009, I issued a Prehearing Conference Memorandum and Request for Comment in this case. In the memorandum, I conclude that the project does not raise a significant issue with respect to aesthetics. I also requested comment regarding potential responses to the Applicant's provision of false information on the application, the installation and interconnection of the project without Board approval, and non-compliance with directives given during the prehearing. Finally, I advised the Applicant to disconnect the system from the grid in order to avoid continued violation.

On July 7, the Applicant filed a letter with the Board stating that he was unaware that false information had been provided on the application because he relied on his contractor, Mr. Blittersdorf, in filing the application. The Applicant also states that he was relying on Mr. Blittersdorf to contact the Brissons regarding mitigation issues. Finally, the Applicant states that he would disconnect the system by July 9, 2009.

On July 9, 2009, the Department filed comments in response to the prehearing conference memorandum suggesting a fine be imposed upon the Applicant.

On July 14, 2009, the Applicant filed a letter with the Board in response to the Department's comments. The Applicant argues that a fine should not be imposed on him because he relied upon Mr. Blittersdorf's expertise as an installer in submitting the application. The Applicant also states that he and the Brissons have reached an agreement with regard to landscaping in order to mitigate aesthetic impacts of the project.

On July 14, 2009, the Brissons filed a letter with the Board stating that they were satisfied with the landscaping mitigation plan described by the Applicant.

III. FINDINGS

Pursuant to 30 V.S.A. § 30, the Board may impose penalties for violations of 30 V.S.A. § 248 and for willful hindrance, delay, or obstruction of the Board in the discharge of its duties. Section 30 also requires notice and opportunity for hearing prior to imposition of a penalty under

the section. In this case, there appear to be undisputed facts supporting the imposition of a penalty. In this Proposal for Decision, I will set forth these facts and the proposed penalty.

The following facts appear to be undisputed:

1. On December 1, 2008, Applicant filed an application for a CPG for a net metered photovoltaic system to be erected on his property at 410 Sunrise Drive in Huntington, Vermont. Application at Section 1.

2. The project consists of a pole-mounted photovoltaic array approximately eight feet high and four feet wide. The system-rated power output of the system is 1.368 kW AC. Application at Section 4.

3. The application is signed by the Applicant and dated May 23, 2008. Application at Section 3.

4. The Applicant signed the application "under the pains and penalties of perjury." Application at Section 3.

5. The application states in bold directly above the signature line: "Making false or misleading statements on this application is subject to penalties under 30 V.S.A. § 30 and/or revocation of any approval granted." Application at Section 3.

6. The application states that copies of the application were sent to all required parties, including the Board and adjoining landowners, on May 29, 2008. Application at 1.

7. Construction of the project began sometime in November of 2008. Tr. 6/9/09 at 14-15 (Blittersdorf).

8. Adjoining landowners did not receive a copy of the application until November 25, 2008. The application was filed with the Board on December 1, 2008. *See* letter from the Brissons to the Board dated November 25, 2008.

9. The application states that the project will not be visible from adjoining properties. Application at Section 9.

10. The project is clearly visible from adjoining properties. Tr. 6/9/09 at 12-13 (Petell).

11. The Applicant has agreed to plant a screen of 3 to 5 Arborvitae with a height of at least eight feet to partially block the Brissons' view of the project. *See* letter from the Applicant to the Board dated July 13, 2009, and letter from the Brissons to the Board dated July 13, 2009.

IV. DISCUSSION

As I described in the prehearing conference order, I conclude that this project, due mainly to its relatively small size, does not have the potential to raise a significant issue with regard to aesthetic impacts. Therefore, had the Applicant complied with the applicable rules and statutory provisions and provide accurate information in his application, I would have recommended that the Board approve the project and issue the CPG without further hearing. However, because the Applicant and his installer chose to disregard statutory and Board rule provisions, I recommend that the Board decline to issue a CPG at this time.

The material facts in this case do not appear to be in question. The Applicant and his installer readily admit that the application, which the Applicant signed "under the pains and penalties of perjury," contains false information, and that the system was installed and interconnected without Board approval. The Applicant argues that he was distracted by family matters and relied on his installer in filing the application.[1] The installer argues that he installed the system before getting the necessary approvals due to incentive deadlines and deteriorating weather conditions.[2] I find these rationalizations wholly unpersuasive given the facts presented. The Applicant and his installer have completely and knowingly disregarded Board Rules and statutory provisions. I find the actions of the installer in this case to be extremely troubling. I also believe that the installer is in large part responsible for the violations committed with regard to this project. Nonetheless, it is ultimately the responsibility of the Applicant, in signing the application and attesting to its truthfulness, to ensure compliance with Board Rules and statutory provisions.[3] Accordingly, I conclude that the Applicant violated 30 V.S.A. § 248(a)(2)(A) which prohibits site preparation for or construction of an electrical generation facility without first obtaining a certificate of public good. I further conclude that, by including false information on the net metering application, the Applicant has willfully hindered, delayed, and obstructed the

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1. Applicant's comments filed July 14, 2009; tr. 6/9/09 at 12-14 (Petell).

2. Tr. 6/9/09 at 14-16 (Blittersdorf).

3. The Board does not have jurisdiction to address any claims that the Applicant may have against Mr. Blittersdorf with regard to his actions and representations in connection with this installation.

Board in the discharge of its duties. Therefore, a penalty should be imposed pursuant to 30 V.S.A. § 30.

The Department argues that "a sanction of $1,000 against the applicant is appropriate, both because of the apparent complete and knowing disregard of statutory and Board rule requirements, and as a deterrent to future non-compliant actions in the application and installation process for net metered systems."[4] The Department also argues that the Applicant should be required to pay an amount equal to any savings realized from operation of the system in addition to the $1,000 penalty. Finally, the Department has sent a letter notifying Renewable Energy Vermont, the administrator of the list of approved installers eligible for incentive grants, of Mr. Blittersdorf's "non-compliance in this case, and apparent non-compliance in other instances as well."[5]

The non-compliance of the Applicant and his installer in this case also has broad and serious implications for the entire net metering program in Vermont. The net metering application and approval process was designed by the Board to be simple and expedient for applicants, provide adequate safety and reliability of the electric system, and to provide adequate notice and opportunity for those impacted by the system. In maintaining this balance, the Board relies heavily on the applicants and installers to know and comply with Board rules and statutory provisions governing these projects and to provide accurate information to the Board. If the Board can no longer rely on this compliance and the representations of applicants, the process will need to become less streamlined and more cumbersome in order to ensure compliance with the legal requirements, and reliability of the information presented. Therefore, I conclude that serious financial sanctions against the Applicant in this case are warranted.

Pursuant to 30 V.S.A. § 30(b)(2) the Board may impose a civil penalty up to $40,000 and, in the case of continuing violation, up to $10,000 per day not to exceed $100,000 for violations of 30 V.S.A. § 248. Section 30(c) sets forth a list of factors that the Board may consider when determining the amount of penalty, including whether the respondent knew or had reason to

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4. Department comments at 2.

5. *Id.* at 3.

know the violation existed and whether the violation was intentional, the length of time the violation existed, and the deterrent effect of the penalty. I recommend that the Board impose a $1,000 penalty against the Applicant, as suggested by the Department, as a reasonable and appropriate sanction given the circumstances of this case. With respect to the additional penalty suggested by the Department, I conclude that determination of the savings gained from the system without a means to verify the system's production, would be a difficult and time-consuming exercise. In the alternative, I recommend that the Board require the Applicant to perform the landscaping he has agreed to with the Brissons as an additional penalty. Further, I recommend that the Board's net metering application form be revised to include: (1) a certification from the applicant that with respect to new projects, neither site preparation nor construction have commenced; and (2) an attestation of compliance with Board rules and statutory provisions from the installer of the system.

V. RECOMMENDATION

Based on the review of the record in this docket and the reasons set forth in the above discussion, I recommend that the Board impose a penalty of $1,000 against the Applicant and require the Applicant to provide additional landscaping for the project in accordance with the agreement between the Applicant and the Brissons. Once the Applicant has paid the $1,000 penalty and notified the Board that the planting has taken place, I recommend that the Board approve the Applicant's petition for net metering.

A Proposal for Decision pursuant to 3 V.S.A. § 811 has been served upon the parties to this case.

Dated at Montpelier, Vermont, this 12th day of August, 2009.

s/Gregg C. Faber
Gregg C. Faber
Hearing Officer

VI. BOARD DISCUSSION

Summary

On July 30, 2009, the Applicant filed a check in the amount of $1,000 in payment of the fine imposed in the Hearing Officer's Proposal for Decision ("PFD"). The Applicant also signified that he had completed the additional tree planting as recommended in the PFD.

No other comments on the PFD have been filed with the Board.

After considering the Applicant's compliance with the recommendations in the PFD and payment of the fine imposed in the PFD, and based on our review of the record in this case, we accept the recommendation of the Hearing Officer in the PFD and approve the Applicant's request for a certificate of public good for the net metering project, pursuant to 30 V.S.A §§ 219a and 248. However, we, like the Hearing Officer, our extremely concerned by the actions of the Applicant and his installer in this case. We also wish to commend the Department for its letter notifying Renewable Energy Vermont of the installer' non-compliance in this case. Finally, we adopt the Hearing Officer's recommendation to include an installer attestation as part of the net metering application in an effort to prevent further non-compliance by installers of net metering systems in the future.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings of fact, conclusions, and recommendation of the Hearing Officer in this case are adopted.

2. The Applicant is liable for a civil penalty in the amount of One Thousand Dollars ($1,000.00), and the check in the amount of One Thousand Dollars ($1,000.00) already sent to the Public Service Board by the Applicant, on July 30, 2009, is accepted as payment in full of this civil penalty.

3. Applicant's petition for a certificate of public good pursuant to 30 V.S.A. § 248 is approved and a certificate of public good for Applicant's net metering project shall be issued.

4. Construction, including related tree clearing, operation and maintenance of the net metering system shall be in accordance with the plans and evidence submitted in this proceeding. Any material or substantial change in the project is prohibited without prior Board approval.

5. The net metering system shall comply with applicable existing and future statutory requirements and Board Rules and Orders.

6. In the event the certificate of public good is transferred pursuant to Board Rule 5.107(B)1, the new owner of the system must file the required certificate transfer form with the Board prior to commencing operation of the system.

Dated at Montpelier, Vermont, this 18th day of August, 2009.

s/James Volz)
)
s/David C. Coen) PUBLIC SERVICE
) BOARD
s/John D. Burke) OF VERMONT

OFFICE OF THE CLERK

FILED: August 18, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.